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December 29, 2003
DEPARTMENT OF ENERGY
OFFICE OF HEARINGS AND APPEALS

Hearing Officer's Decision

Name of Case: Personnel Security Hearing

Date of Filing: April 14, 2003

Case Number: TSO-0034

This Decision concerns the eligibility of XXXXXXXXXXXXXXXX (the individual) for continued access authorization ^{1/} under the regulations set forth at 10 C.F.R. Part 710, entitled "Criteria and Procedures for Determining Eligibility for Access to Classified Matter or Special Nuclear Material." The individual's access authorization was suspended by one of the Department of Energy's (DOE) Operations Offices. Based on the record before me, I have determined that the individual's access authorization should not be restored.

I. Background

The individual is employed at a DOE facility where her work requires her to have an access authorization. The local DOE security office issued a Notification Letter to the individual on February 18, 2003. The Notification Letter alleges under 10 C.F.R. § 710.8(f) that the individual has "deliberately misrepresented, falsified, or omitted significant information from a Personnel Security Questionnaire or a Questionnaire for Sensitive National Security Positions." It also alleges that the individual "has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy, or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation, or duress which may cause him to act contrary to the best interest of the national security." 10 C.F.R. § 710.8(l).

The security concerns in the Notification Letter are based on the following factual allegations. In personnel security interviews (PSI), Questionnaires for National Security Positions and Interrogatories, the individual falsified significant information about her use of illegal drugs. Because of these security concerns, the case was referred for administrative review. The individual filed a request for a hearing on the concerns raised in the Notification Letter. DOE transmitted the individual's hearing request to the Office of Hearings and Appeals (OHA), and the OHA Director appointed me as the Hearing Officer in this case.

^{1/} Access authorization is defined as an administrative determination that an individual is eligible for access to classified matter or is eligible for access to, or control over, special nuclear material. 10 C.F.R. § 710.5(a).

At the hearing that I convened, the DOE Counsel elected not to call any witnesses. The individual called two witnesses, her supervisor and her companion. Both the individual and the DOE submitted a number of written exhibits prior to the hearing.

II. Standard of Review

The hearing officer's role in this proceeding is to evaluate the evidence presented by the agency and the individual, and to render a decision based on that evidence. *See* 10 C.F.R. § 710.27(a). Part 710 generally provides that "[t]he decision as to access authorization is a comprehensive, common-sense judgment, made after consideration of all relevant information, favorable and unfavorable, as to whether the granting or continuation of access authorization will not endanger the common defense and security and is clearly consistent with the national interest. Any doubt as to the individual's access authorization eligibility shall be resolved in favor of national security." 10 C.F.R. § 710.7(a). I have considered the following factors in rendering this decision: the nature, extent, and seriousness of the conduct; the circumstances surrounding the conduct; the individual's age and maturity at the time of the conduct; the voluntariness of the individual's participation; the absence or presence of rehabilitation or reformation and other pertinent behavioral changes; the motivation for the conduct, the potential for pressure, coercion, exploitation, or duress; the likelihood of continuation or recurrence; and other relevant and material factors. *See* 10 C.F.R. §§ 710.7(c), 710.27(a). The discussion below reflects my application of these factors to the testimony and exhibits presented by both sides in this case.

When reliable information reasonably tends to establish the validity and significance of substantially derogatory information or facts about an individual, a question is created as to the individual's eligibility for an access authorization. 10 C.F.R. § 710.9(a). The individual must then resolve that question by convincing the DOE that restoring her access authorization "would not endanger the common defense and security and would be clearly consistent with the national interest." 10 C.F.R. § 710.27(d). In the present case, the individual has not convinced me that restoring her security clearance would not endanger the common defense and would clearly be in the national interest.

III. Findings of Fact

The relevant facts in this case are uncontested. DOE states that on the following occasions the individual gave false or misleading information on personnel security questionnaires:

(1) First, DOE asserts that on May 31, 2001, on a Questionnaire for National Security Positions (QNSP), Question 24a, the individual answered "Yes" to the question "Since the age of 16 or in the last 7 years, . . . , have you illegally used any controlled substance, for example, marijuana, cocaine, crack cocaine, hashish, narcotics . . . ?" Following that question, Question 24c, the individual was asked whether "in the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer . . . or sale of any narcotic, depressant, stimulant . . . for your own intended profit or that of another?" The individual checked "No" to this question. In the final portion of Question 24, the individual was asked "If you answered "Yes" to a or b above, provide

the date(s), identify the controlled substance(s) and/or prescription drugs used, and the number of times each was used.” The individual’s response indicated that she used marijuana a “couple” of times during April 2000.

(2) Next, the DOE contends that on a QNSP dated January 10, 2002, regarding the individual’s use of illegal drugs and drug activity, the individual was asked the same questions as stated above. However, on Question 24c (“In the last 7 years, have you been involved in the illegal purchase, manufacture, trafficking, production, transfer . . . or sale of any narcotic, depressant, stimulant . . . for your own intended profit or that of another?”) the individual answered “Yes” this time. In the final portion of Question 24, the individual indicated that she used marijuana only “on weekends” from March 2000 until June 2000.

(3) The DOE asserts that when interviewed by a DOE Personnel Security Representative on September 10, 2002, the individual discussed her use of marijuana, and explained the basis for her answers to Question 24. During this interview, the individual revealed that she smoked marijuana regularly from 1996 until June 2000. When asked how frequently she smoked, the individual revealed that during 1997 and “part of 98” she smoked two joints “probably four to five times a week.” She further revealed that from approximately 1998 until 2000, she smoked “two to three times a week.” The individual stated that she “would usually buy” marijuana “at times” “once a week to once every other week.” During this interview, the individual explained that she did not answer the questions honestly because she feared that divulging the extent of her marijuana use could have impeded her from obtaining a security clearance. She further stated that she “knew that in my own self and my own conscience that I had falsified those documents and I do know, I do realize what kind of offense that is.” See DOE Exhibit 9 at 12.

(4) The DOE contends that on September 12, 2001, the individual was interviewed and received a set of interrogatories, several of which asked whether the individual had used and/or purchased illegal drugs. When asked whether the individual had ever tried, experimented with, or used (even one time) one of the following illegal drugs, the individual checked only “Marijuana” even though twelve illegal drugs were listed, including Marijuana, Cocaine, and “other.” When asked to provide the date of the first and last use of each illegal drug, the individual wrote “estimated dates Jan 00 to May 00.” Finally, one of the interrogatories asked whether the individual had “bought, sold, trafficked, or been otherwise involved in the distribution of illegal drugs” and the individual answered “NO.”

(5) The DOE asserts that during the interview on September 12, 2001, the individual discussed her use and purchase of marijuana, divulged her cocaine and Valium use, and explained what motivated her answers to the interrogatories. Specifically, the individual recalled that she smoked marijuana regularly from 1996 through June 2000, that she smoked two joints “probably four to five times a week,” and that from approximately 1998 to 2000, she smoked marijuana “two to three times a week.” Regarding her use of cocaine and Valium, the individual revealed that she “snorted cocaine” probably in 1998 and that during 1997 or 1998, she used Valium “maybe once a week, every other week.” During this interview the individual acknowledged falsifying her answers to the interrogatories.

See February 18, 2003 Notification Letter.

The DOE asserts that the individual's answers to the above questions were dishonest and misleading. The individual's earlier responses indicate that the individual had never purchased marijuana and had smoked marijuana only sparingly during her life and for a very brief period of time. However, the individual later acknowledged that she had in fact purchased marijuana at times once a week to once every other week and had smoked marijuana quite often.

IV. Analysis

A. Security Concerns Cited Under 10 C.F.R. § 710.8(f)

False statements or misrepresentations by an individual in the course of an official inquiry regarding a determination of eligibility for DOE access authorization raise serious issues of honesty, reliability, and trustworthiness. The DOE security program is based on trust, and when an access authorization holder breaches that trust, it is difficult to determine to what extent the individual can be trusted again in the future. *See, e.g., Personnel Security Hearing* (Case No. VSO-0013), 25 DOE ¶ 82,752 at 85,515 (1995)(affirmed by OSA, 1995); *Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999), *aff'd*, *Personnel Security Review*, 27 DOE ¶ 83,030 (2000) (*terminated* by OSA, 2000). This security concern applies, however, only to misstatements that are "deliberate" and involve "significant" information. 10 C.F.R. § 710.8(f) (Criterion F). Based on the record before me, I find that the individual deliberately misrepresented significant information during her PSI. Consequently, DOE properly invoked Criterion F when it suspended the individual's access authorization.

A finding of derogatory information does not, however, end the evaluation of evidence concerning the individual's eligibility for access authorization. *See Personnel Security Hearing* (Case No. VSO-0244), 27 DOE ¶ 82,797 (1999) (affirmed by OSA, 1999); *Personnel Security Hearing* (Case No. VSO-0154), 26 DOE ¶ 82,794 (1997), *aff'd*, *Personnel Security Review* (Case No. VSA-0154), 27 DOE ¶ 83,008 (1998) (affirmed by OSA, 1998). Cases involving verified falsifications or misrepresentations are nonetheless difficult to resolve because there are neither experts to opine about what constitutes rehabilitation from lying nor security programs to achieve rehabilitation. Therefore, Hearing Officers must look at the statements of an individual, the facts surrounding the misrepresentation or false statement and the individual's subsequent history in order to assess whether the individual has rehabilitated herself from the falsehood and whether restoring the security clearance would pose a threat to national security. *See Personnel Security Hearing* (Case No. VSO-0327), 27 DOE ¶ 82,844 (2000), *aff'd*, *Personnel Security Review* (Case No. VSA-0327), 28 DOE ¶ 83,005 (2000) (*affirmed* by OSA, 2000); *Personnel Security Hearing* (Case No. VSO-0418), 28 DOE ¶ 82,795 (2001). In the end, as a Hearing Officer, I must exercise my common sense judgment whether the individual's access authorization should be restored after considering the applicable factors prescribed in 10 C.F.R. § 710.7(c).

B. Mitigation of Criterion F Concerns

The key issue in this case is whether the individual has brought forward sufficient evidence to demonstrate that she can now be trusted to be consistently honest and truthful with the DOE. In considering this question, I found that the nature of the individual's misrepresentations was serious. The individual's lack of candor concerning an area of her life that could increase her vulnerability to coercion or blackmail raises important security concerns. The DOE must rely on individuals who are granted access authorization to be honest and truthful; this important principle underlies the criterion set forth in 10 C.F.R. § 710.8(f). This principle has been consistently recognized by DOE Hearing Officers. *See, e.g., Personnel Security Hearing* (Case No. VSO-0281), 27 DOE ¶ 82,821 at 85,915 (1999).

As stated earlier, the individual acknowledges that she was untruthful during her security interviews with the DOE; however she asserts that she now realizes the gravity of her dishonesty. She states that she is now "more responsible, more goal-oriented than I was. My main goal is to take care of my child and to be able to provide for him." Transcript (Tr.) of Personnel Security Hearing at 12. During the hearing, the individual asserted that she was in a controlling relationship which led to her lifestyle of drug usage. *Id.* at 15. She stated that since getting out of that relationship (where she allegedly suffered a great deal of mental abuse) in early 2000, she has regained her self-respect and has more control over her own life. *Id.* at 17. The individual further stated that she now has a better understanding of the "legal documents" she completed for DOE. When asked during the hearing why she did not answer the security questions honestly, the individual stated that she "wanted to put that part of her life behind her. I realize that does not excuse it." *Id.* at 24. Finally, the individual stated that she has learned from this experience and now understands the importance of being truthful. *Id.* at 30. She stated that if given a security questionnaire in the future she is certain that she will be completely truthful. *Id.*

After considering all the evidence before me, I believe that the individual has failed to mitigate the concerns raised by the misrepresentations made during her security interviews and on the security questionnaires. The individual was given several opportunities to fully acknowledge her illegal drug use and chose not to be honest. She now asserts that she no longer associates with or is involved in a lifestyle of drugs. Tr. at 9. Specifically she asserts that she went through a difficult period growing up and moving into adulthood. Because she wanted to leave a very difficult time in her life behind her, the individual was not completely honest with the DOE and did not want to lose her access authorization. Further, the individual acknowledges that she fully understood all of the security questions asked of her and was fully aware that her answers were not honest. *Id.* at 26.

Although the individual appeared to be very remorseful for her falsifications, I find her explanation for her untruthfulness to be unpersuasive. First, the individual's willingness to conceal information from the DOE in order to avoid adverse consequences is an action that is simply unacceptable among access authorization holders. *See Personnel Security Hearing*, 25 DOE ¶ 82,752 (1995) (affirmed by OSA, 1995). Second, the fact that the individual was warned about the importance of providing truthful answers, but chose not to be truthful shows a deliberate disregard for applicable DOE rules and regulations. Other factors of concern to me are the following: (1) the individual's falsifications

are fairly recent; (2) the individual falsified information not on one occasion, but on several occasions, and thus her falsifications are not an isolated incident; and (3) at the time of her falsifications beginning in 2001, the individual was in her mid-20s, an adult. In sum, the individual's misrepresentations raise serious and unresolved security concerns. Accordingly, I find that the individual has failed to mitigate the security concerns raised by Criterion F.

C. Security Concerns Cited Under 10 C.F.R. § 710.8(l); Unusual Conduct

Criterion L relates to information indicating that an individual has engaged in unusual conduct or is subject to circumstances which tend to show that he is not honest, reliable, or trustworthy; or which furnishes reason to believe that he may be subject to pressure, coercion, exploitation or duress which may cause him to act contrary to the best interests of national security. 10 C.F.R. § 710.8(l).

In the present case, the DOE reiterates the fact that the individual gave untruthful answers to several sets of security interrogatories and in general misrepresented her use of illegal drugs. As discussed above, the DOE must be able to rely on persons who are granted access authorization to be honest and reliable. We have stated on numerous occasions that conduct involving questionable judgment, unreliability, untrustworthiness, lack of candor, dishonesty, or failure to obey laws and follow rules and regulations raises a concern that the individual may not safeguard classified information. Based on the foregoing, I cannot find that the individual has mitigated the Criterion L concerns at this time.

III. Conclusion

As explained in this Decision, I find that the DOE properly invoked 10 C.F.R. § 710.8(f) and (l) in suspending the individual's access authorization. The individual has not presented adequate mitigating factors that would alleviate the legitimate security concerns of the DOE Operations Office. In view of these criteria and the record before me, I find that the individual has not demonstrated that restoring her access authorization would not endanger the common defense and would be consistent with the national interest. Accordingly, I find that the individual's access authorization should not be restored. The individual may seek review of this Decision by an Appeal Panel under the regulations set forth at 10 C.F.R. § 710.28.

Kimberly Jenkins-Chapman
Hearing Officer
Office of Hearings and Appeals

Date: December 29, 2003